

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-213575

**DATE:** May 22, 1984

**MATTER OF:** ComPath Business Telephone Systems

**DIGEST:**

1. Protester's attempt to submit a late proposal was properly rejected by the contracting agency since any proposal protester could have submitted would not have met exceptions listed in the solicitation for the consideration of late offers.
2. An offeror bears the risk of nonreceipt or delay in receipt of solicitations absent substantive proof that the agency deliberately attempted to exclude the offeror from participating in the procurement. GAO finds that the protester's failure to submit an offer by the closing date for submission of proposals was, ultimately, the protester's own fault.

ComPath Business Telephone Systems (ComPath) protests a series of alleged misleading communications by the General Services Administration (GSA) which, ComPath contends, denied it a reasonable opportunity to submit a proposal under GSA request for proposals (RFP) 9FCG-OSF-N-A0805/83. The RFP was for the maintenance of a government-owned telephone system located in the Federal Building, 11000 Wilshire Boulevard, West Los Angeles, California.

For the reasons set forth below, we find ComPath's protest to be without merit.

Contract GS-09S-39653 was awarded to ComPath on November 8, 1978. The contract was for the purchase, installation and maintenance of a telephone system in the above building. The terms of the contract called for a period of performance of 60 months from the date of award. However, the government reserved the option to extend the performance period an additional 60 months. The contract was scheduled for either expiration or renewal on November 8, 1983.

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On September 8, 1983, GSA notified ComPath's vice president in writing of its intent to renew the company's contract from November 9, 1983, through November 8, 1984. However, subsequent to the issuance of the notification, GSA instead decided to issue a solicitation for the maintenance of the building's telephone system because of a "need to upgrade maintenance requirements consistent with current technology." Notice of GSA's intent to issue a solicitation was published in the September 23, 1983, Commerce Business Daily.

The RFP was issued on September 29, 1983, with a closing date for receipt of proposals of October 20, 1983, at 2 p.m. On October 19, 1983, GSA received a letter from ComPath dated October 14, 1983, in which the company requested an explanation of GSA's intent in issuing the RFP. GSA responded in writing to the ComPath letter on the same day.

At the October 20, 1983, closing date, GSA received proposals from two offerors. Also on this date, GSA received after the 2 p.m. closing time a telephone request from ComPath's corporate counsel asking GSA to either accept a late offer under the RFP or to consider ComPath's current contract as an acceptable offer. ComPath's request was denied by GSA.

By letter dated October 28, 1983, and received by us on October 31, 1983, ComPath protested GSA's actions. Award pending the protest was made on November 16, 1983, by GSA to General Telephone Company of California.

ComPath argues that in light of GSA's September 8, 1983, notification of the agency's intent to renew ComPath's contract, the agency had an obligation to clearly notify ComPath of its subsequent change of intent. ComPath goes on to assert that it was not informed of GSA's changed intent until the day proposals under the RFP were due. ComPath also argues that GSA had actual knowledge prior to the closing date that ComPath was not on notice of GSA's intent not to renew ComPath's contract since ComPath had sent GSA a letter on October 14, 1983, indicating a belief that the issuance of the RFP was in error.

In addition, ComPath takes the position that it should not have been necessary for it to have had to submit a proposal for the same services and supplies that were covered under an existing contract with GSA. According to ComPath, a negotiated procurement assumes that the offerors

are willing to negotiate terms and conditions. ComPath emphasizes that it was and still is prepared to further negotiate the terms and conditions of the contract it had with GSA in order to accommodate any changed requirements from GSA.

GSA states that in an attempt to ensure that ComPath received actual notice of the procurement, two copies of the RFP were mailed to the company on September 29, 1983. GSA states that one copy was mailed to ComPath's corporate office (but not mailed to that office's current address effective since December 1981) and one copy was mailed to the office designated in ComPath's contract for contract administration. GSA also points out that in an October 14, 1983, letter to GSA, ComPath's vice president acknowledged receipt of the RFP. Thus, GSA argues that under the circumstances, ComPath has no grounds for claiming either that it was misled as to the agency's intent or that it was denied a reasonable opportunity to participate under the RFP. Finally, GSA contends that an offeror must bear the responsibility for late receipt of its proposal unless the specific conditions of the solicitation for consideration of late proposals are met, but that none of the conditions set forth in the RFP's late proposal clause would have permitted acceptance of a late offer by ComPath.

It is the offeror's responsibility to assure timely receipt of its offer, and the offeror must bear the responsibility of late arrival unless the specific conditions of the solicitation for consideration of late proposals are met. International Technologies, Inc., B-203216, May 29, 1981, 81-1 CPD 427. The RFP contained the standard clauses stipulating that a proposal received after the date for receipt of proposals listed in the RFP would not be considered unless: (1) it had been sent by registered or certified mail not later than the fifth calendar day prior to the date for receipt of proposals; or (2) it was sent by mail or telegram (if authorized) and the government determines that the late receipt was due solely to mishandling by the government after receipt at the government installation; or (3) it was the only proposal received. Since any late offer submitted by ComPath could not have met any of the exceptions set forth in the RFP, it would have to have been rejected. See Federal Sales Service, Inc., 58 Comp. Gen. 656 (1979), 79-2 CPD 36.

With regard to ComPath's allegation that GSA did not make a good-faith effort to notify the company of the issuance of the RFP, an offeror bears the risk of nonreceipt or delay in receipt of solicitations or amendments in the

absence of substantive proof that the agency deliberately attempted to exclude the offeror from participating in the procurement. Sigma Treatment Systems, B-207791, June 21, 1982, 82-1 CPD 613. We find no proof of any intent to exclude ComPath.

GSA was within its right to reverse its initial decision to exercise the option. As stated in ComPath's 1978 contract: "Written notice of [GSA's] intent to [exercise the option] shall not be deemed to commit [GSA] to an extension." While it may have been better to have expressly notified ComPath's vice president (the same individual who had been informed of the initial decision to exercise the option) that GSA had changed its mind and would no longer exercise the option, the fact remains that ComPath's vice president eventually received the new RFP 6 days prior to the closing date.

Had the vice president telephoned the contracting officer on October 14, the vice president would have found that ComPath had 6 days to prepare its proposal for services it says it had already effectively proposed on, given its outstanding option. Consequently, ComPath would have been able to submit a new proposal.

Finally, we reject ComPath's argument that it was not necessary for it to submit any offer because of its incumbency. The record shows that the RFP contained different requirements for telephone maintenance than ComPath was performing under its contract and it was not merely a "market test" to determine if it was advantageous to exercise ComPath's option.

We deny ComPath's protest.

*Milton J. Jordan*  
for Comptroller General  
of the United States